

operations may be permitted within the boundaries of a national forest, may file a request for review of that determination with the office of the OSMRE official whose determination is being appealed and at the same time shall send a copy of the request to the Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (phone 703-235-3750). The OSMRE official shall file with the Board the complete administrative record of the decision under review as soon as practicable.

(b)(1) Notice by OSMRE to the applicant or permittee of a determination under section (a) shall be provided by certified mail or by overnight delivery service if the applicant or permittee has agreed to bear the expense of this service. The request for review of a determination under section (a), when that determination is made independently of a decision on an application for a permit; permit revision; permit renewal; transfer, assignment, or sale of rights granted under permit; or coal exploration permit, shall be filed within 30 days after receipt of the determination by any person who has received a copy of the determination by certified mail or overnight delivery service. The request for review shall be filed within 30 days of the date of publication of notice in the FEDERAL REGISTER that a determination has been made for any person who has not received a copy by certified mail or overnight delivery service.

(2) The request for review of a determination under section (a), when that determination is made in conjunction with a decision on an application for a permit; permit revision; permit renewal, transfer, assignment, or sale of rights granted under permit; or coal exploration permit, shall be filed in accordance with 43 CFR 4.1362.

(c) Failure to file a request for review within the time specified in paragraph (b) of this section shall constitute a waiver of the right to review and the request shall be dismissed.

[56 FR 2145, Jan. 22, 1991]

#### **§ 4.1392 Contents of request; amendment of request; responses.**

(a) The request for review shall include—

(1) A clear statement of the reasons for appeal;

(2) A request for specific relief;

(3) A copy of the decision appealed from; and

(4) Any other relevant information.

(b) All interested parties shall file an answer or motion in response to a request for review or a statement that no answer or motion will be filed within 15 days of receipt specifically admitting or denying facts or alleged errors stated in the request and setting forth any other matters to be considered on review.

(c) A request for review may be amended once as a matter of right prior to receipt of an answer or motion or statement filed in accordance with paragraph (b) of this section. Thereafter, a motion for leave to amend the request shall be filed with the Board.

(d) An interested party shall have 10 days from receipt of a request for review that is amended as a matter of right or the time remaining for response to the original request to file an answer, motion, or statement in accordance with paragraph (b) of this section, whichever is longer. If the Board grants a motion to amend a request for review, the time for an interested party to file an answer, motion, or statement shall be set forth in the order granting the motion.

#### **§ 4.1393 Status of decision pending administrative review.**

43 CFR 4.21(a) applies to determinations of the Office of Surface Mining under 30 U.S.C. 1272(e).

#### **§ 4.1394 Burden of proof.**

(a) If the permit applicant is seeking review, OSM shall have the burden of going forward to establish a prima facie case and the permit applicant shall have the ultimate burden of persuasion.

(b) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that a person holds or does not hold a valid existing right, or that